

In: KSC-BC-2020-06
Specialist Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi

Before: Pre-Trial Judge
Judge Nicolas Guillou

Registrar: Dr Fidelma Donlon

Filing Participant: Counsel for Kadri Veseli

Date: 3 February 2021

Language : English

Classification : Public

Request for Extension of Word limit for Preliminary Motions

Specialist Prosecutor
Jack Smith

Counsel for Hashim Thaçi
David Hooper QC

Counsel for Kadri Veseli
Ben Emmerson CBE QC

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David Young QC

Counsel for Jakup Krasniqi
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I. INTRODUCTION

1. The Defence for Mr. Veseli respectfully requests the Pre-Trial Judge to authorise an extension of the word limit for: (i) the preliminary motion to challenge jurisdiction under Rule 97(1)(a) of the Rules of Evidence, up to a total of 15,000 words; and (ii) the preliminary motion to challenge the indictment under Rule 97(1)(b) of the Rules of Evidence, up to a total of 10,000 words. The Defence submits that good cause exists that necessitates an extension of the word limit in relation to both preliminary motions in view of the novelty, number and complexity of the issues to be addressed.

II. PROCEDURAL BACKGROUND

2. On 23 November 2020, the Pre-Trial Judge set 11 December 2020 as the deadline for the SPO to complete disclosure pursuant to Rule 102(1) material.¹ Pursuant to Rule 97(2) of the Rules, preliminary motions shall be in writing and shall be brought within thirty (30) days from the disclosure of all material and statements referred to in Rule 102(1)(a).

3. On 14 December 2020, the Defence of the Accused filed a joint request for variation of the time limit for submission of preliminary motions under Rule 97(1) of the Rules.²

4. On 16 December 2020, the Pre-Trial Judge granted the joint Defence request for variation of the time limit to submit preliminary motions and requested the Defence to submit any preliminary motions, within the meaning of Rule 97(1) of the Rules by Wednesday, 10 February 2021.³

III. APPLICABLE LAW

5. Pursuant to Article 42 of the Practice Directions, any preliminary motion submitted pursuant to Rule 97 of the Rules and response thereto shall each not exceed 9,000 words.

¹ KSC-BC-2020-06/F00099, Pre-Trial Judge, *Framework Decision on Disclosure of Evidence and Related Matters*, 23 November 2020.

² KSC-BC-2020-06/F00137, Defence for Mr. Thaçi, Mr. Veseli, Mr. Selimi, and Mr. Krasniqi, *Joint Defence Request for Variation of the Time Limit for Preliminary Motions Submissions*, 14 December 2020.

³ KSC-BC-2020-06/F00150, Pre-Trial Judge, *Decision on the Conduct of Detention Review and Varying the Deadline for Preliminary Motions*, 16 December 2020.

6. Pursuant to Article 36 of the Practice Directions, in exceptional circumstances, a Participant may seek authorisation from the Panel sufficiently in advance to exceed the word limits prescribed in the Practice Direction and provide an explanation of the good cause that necessitates exceeding the word limit.

IV. SUBMISSIONS

7. The Defence for Mr. Veseli submits that good cause exists for the Pre-Trial Judge to authorise the requested increase in word limit for the Preliminary Motion, in view of the novelty, number and complexity of the issues presented.

8. The Defence notes that the legal structure and set up of the KSC is unique and unprecedented when compared to other ad hoc international tribunals, international courts, or hybrid courts. As a consequence, the Defence has been presented with a set of different and complex issues, each of which would have warranted, in normal circumstances, the use of the total number of words allowed by Article 42 of the Practice Directions.

9. The preliminary motion to challenge the Indictment under Rule 97(1)(b) deals with a series of factual issues, which the Defence believes are determinative to the precise scope of the Indictment. As a consequence, the Defence will need to assess the relevance of a multitude of the evidentiary material supporting the material facts presented by the SPO and referred to by the Pre-Trial Judge in his Decision on the Confirmation of the Indictment.⁴

10. As with regard to the motion to challenge the jurisdiction of the KSC, the Defence will need to engage, *inter alia*, with a variety of complex and theoretical issues which are unprecedented when compared to the practice of other domestic, international, or hybrid courts. As such, proper space is needed to discuss matters touching on the essence of fundamental rights protected by the Constitution and relevant international human rights treaties.

⁴ KSC-BC-2020-06/F00026/RED, Pre-Trial Judge, *Public Redacted Version of Decision on the Confirmation of the Indictment Against Hashim Thaçi, Kadri Veseli, Rexhep Selimi and Jakup Krasniqi*, 26 October 2020.

11. Should the Pre-Judge consider it necessary, the Defence for Mr. Veseli is prepared to provide, on an *ex parte* basis, further detailed information on the issues that the Defence seeks to engage with in its preliminary motions pursuant to Rule 97 of the Rules of Procedure and Evidence.

V. CONCLUSION

12. In view of the above, the Defence respectfully requests the Pre-Trial Judge to grant the authorise requested extension of the word limit for the submission of the two preliminary motions above pursuant to Rule 97 of the Rules of Procedure and Evidence.

Word count: 763



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